

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2481 OF 2025

Shehzad Ali Hussain Anr.

...Petitioners

Versus

Municipal Corporation of Greater Mumbai & Ors.

...Respondents

Mr. G.S. Godbole, Senior Advocate, a/w Mr. Shivraj Patne & Mr. Aditya Joshi for the Petitioner.

Mr. S.V. Tondwalkar i/b Ms. Komal Punjabi for Respondent Nos. 1

Mr. Aaditya Jog (J.E.) H/W Ward B&F Department.

CORAM : G.S. KULKARNI &
ARIF S. DOCTOR, JJ.

DATE : 14th JULY, 2025.

P.C:

1 The captioned Writ Petition has been filed under Article 226 of the Constitution of India in which the Petitioner has sought the following substantive reliefs:

- (i) *Issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Writ of Mandamus thereby directing the Respondents to decide/process the Petitioners' Application for retention being P-26653/2025/(264)/H/W Ward/BANDRA-D.*
- (ii) *Issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Writ of Mandamus thereby directing the*

Respondents not take coercive steps in respect of the Petitioners' structure."

2. We must, at the outset, note that the present Writ Petition is thoroughly misconceived and, in our view, would amount to an abuse of the process of law. However, it is necessary to first set out a few facts, which are as follows:

2.1 The Petitioners claim to be the owners of land bearing CTS No. D/264 situated at Danda Gaoathan, Bandra, Mumbai Suburban, measuring 171.4 Sq. Mtrs. (hereinafter referred to as the said '**Land**') and a three storey structure standing thereon ('the said **Structure**').

2.2 It appears that the Petitioners had carried out an unauthorised vertical extension with RCC column, RCC Beam, Ladi Coba Slab without permission of the competent authority, as can be discerned from the Notice dated 14th September 2022 issued by the Respondent to the Petitioners i.e. a Notice under Section 354A of the Mumbai Municipal Corporation Act, 1888 (MMC Act).

2.3 The Petitioners thereafter filed a Suit being Suit No. 2341 of 2022 in the City Civil Court – Dindoshi at Mumbai, impugning the said Notice. On 19th October 2022, City Civil Court, in the said Suit directed the Respondent Corporation to pass a speaking order after considering the reply of the Petitioners and not to take any coercive steps for a period of 7

days after the speaking order was passed.

2.4 It appears that thereafter the Respondent Corporation passed a speaking order and issued a notice dated 26th April, 2023 under Section 351 of the MMC Act to the Petitioners, by which the Petitioners were called upon to remove the unauthorised work within 7 days.

2.5 Since the Petitioners did not comply with the said notice, one Mr. Jaideep Bhagat filed a Writ Petition¹ in this Court *inter alia* seeking initiation of appropriate legal action against the Petitioners' for demolition of the unauthorised construction. The Petitioners were also arrayed as party Respondents in the Petition. During the course of the said Writ Petition the Petitioners specifically undertook to remove the offending structure within a period of 12 weeks. This undertaking was accepted by this Court, however, with a modification that the Petitioners were granted only 5 weeks to demolish the said Structure. This was recorded in the Order dated 11th March 2025 as follows:

“1)...The statements mentioned in the Affidavit are accepted as an undertaking given to this Court except the statement that, the said Respondents will remove the offending structure within a period of 12 weeks from today.

2) ...we grant five week time from today to remove the offending/illegal structure by the Respondent Nos. 3 and 4 by themselves...”

2.6 It appears that thereafter some of the occupants of the said structure

¹ W.P No. 3467/2023

challenged the order dated 11th March 2025 by filing a Special Leave Petition² (SLP) before the Hon'ble Supreme Court of India. However, the Hon'ble Supreme Court vide an order dated 15th April 2025, dismissed the SLP holding as follows:

“2... we grant to the petitioner(s) six weeks’ time to vacate and handover peaceful possession of the premises, subject to filing of the usual undertaking within one week.”

2.7 It appears that thereafter, the Petitioners on 16th June 2025 filed an Application for regularisation in respect of the said structure, thus essentially seeking approval and retention of the existing Ground + 3 floors structure, subject to the same being in the permissible limit as per the DCPR, 2034. The Respondent Corporation, however, on 20th June 2025, issued a notice under Section 351 of the MMC ACT calling upon the Petitioners and occupants of the said building to vacate and hand over the peaceful possession of their premises within 7 days from receipt of the said notice, failing which the Respondent Corporation would initiate the action of demolition as directed by the Hon'ble Supreme Court.

3. The Petitioner by the present Petition seeks issuance of appropriate directions to the Respondents to decide the Petitioner's proposal and further directions not to take coercive steps in respect of the said Structure as per impugned communication/order dated 20th June, 2025 and other ancillary reliefs.

² Special Leave Petition (Civil) No. 010524 of 2025

4. Mr. Godbole, Learned Senior Advocate appearing on behalf of the Petitioners, submitted that the Petitioners only sought limited relief from this Court. He submitted that since the Petitioners had filed an application for regularisation, the same may be considered by the Respondents and until such time, the demolition not be carried out. Mr. Godbole submitted that this was not a case of a patent illegality, and it was thus that he requested that the Petitioners request be acceded to, as no prejudice would be caused to the Respondents if such request was acceded to. He thus submitted that the Petition be allowed in terms of the aforesaid prayers.

5. The Petition was opposed by Ms. Tondwalkar, Learned Counsel for the Respondent Corporation. Ms. Tondwalkar pointed out that the question of acceding to the request of the Petitioner was untenable, not only since the construction carried out by the Petitioners was already declared illegal, but also because the Petitioners had accepted it as such and had given this Court a solemn undertaking that they would remove the said Structure within twelve weeks from the date of the said order, which period had well passed.

6. Having heard Learned Counsel, we find that the Petitioners request cannot be acceded to. This Court had granted to the Petitioners, a period of 5 weeks from 11th March 2025 to demolish the said Structure, which period came to an end on 15th April, 2025. Pursuant to the SLP filed by some of the occupants, , the Hon'ble Apex Court granted them time until

20th May, 2025, to vacate the premises and handover peaceful possession. However, the Petitioners filed the application for regularisation of the said Structure only on 16th June, 2025, which was even after the 12 week period that was requested by the Petitioner *vide* their undertaking to this Court on 11th March, 2025, which period came to an end on 3rd June, 2025. If the present Petition were to be allowed, the same would in effect be allowing the Petitioner to resile from the solemn undertaking given to this Court and as recorded in the order dated 11th March, 2025. Under no circumstances can this even be considered, much less acceded to.

7. Hence, the Petition is dismissed. We make it clear that until such time as the Petitioners comply with the undertaking given to this Court and as recorded in the Order dated 11th March, 2025, the Respondent Corporation shall not consider the Petitioners application for regularisation dated 16th June 2025, or any other Application filed by the Petitioners or any Application filed in respect of the said Structure.

[ARIF S. DOCTOR, J.]

[G.S. KULKARNI, J.]